IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8209 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH

HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ? YES
2	To be referred to the Reporter or not ? NO
3	Whether their Lordships wish to see the fair copy of the judgment ? NO
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? NO
5	Whether it is to be circulated to the civil judge ? NO

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NARENDRAKUMAR CHANDULAL PATEL - Petitioner

Versus

GHANSHYAMBHAI BHAILALBHAI PATEL & 2 - Respondents

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Appearance :
MR PARESH M DAVE for Petitioner.
MR VM PANCHOLI for Respondent No. 1.
MR AD OZA for respondent No. 2.
MR NEERAJ SONI, AGP for Respondent No. 3.

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE K.A.PUJ

Date : 08/10/2007
ORAL JUDGMENT
(Per : HONOURABLE MR.JUSTICE K.A.PUJ)

The petitioner has filed this petition under Article 226 of the Constitution of India praying for the direction to quash and set aside and to declare as void election of respondent No. 1 as a Member of the Gujarat Secondary Education Board in the category of Teachers of Registered Secondary Schools other than Uttar Buniyadi Schools. The petitioner has also prayed for the direction to quash and set aside the orders dated 16.12.2006 (*Annexure D*) and 18.12.2006 (*Annexure F*) with a direction to the Election Officer to hold election for the post of Member of the Gujarat Secondary Education Board in the category of Teachers of Registered Secondary Schools other than Uttar Buniyadi Schools allowing the petitioner to contest the said election.

2. The case of the petitioner is that the petitioner is working as an Assistant Teacher for the last 22 years in a registered secondary school at Savli in Vadodara district. The Secretary of Gujarat Secondary Education Board issued a Notification on 14.11.2006 about the election programme for the Members of the Board for the elections to be held on 19.01.2007. The petitioner filed his application on 12.12.2006 duly proposed by one Shri Narendrabhai Vitthalbhai Patel, an Assistant Teacher of another registered secondary school, namely, Shri Seva Samaj Sharda Mandir School in the category of Teacher of registered secondary schools other

than Uttar Buniyadi Schools. The Election Officer rejected petitioner's application on 16.12.2006 on the ground that the names of the petitioner as well as his proposer did not appear in the voters' list. The petitioner had shown the numbers in the voters' list at which the names of the petitioner and his proposer were appearing, but despite this fact, the petitioner's application was rejected.

3. The petitioner being aggrieved by the said decision of the Election Officer, filed an application / appeal on 18.12.2006 before the Commissioner of Schools which was heard on the same day in the afternoon. The petitioner has pointed out that his name was shown in the voters' list as Shri NC Patel (i.e. Abbreviation of Narendrakumar Chandulal Patel) and his proposer's name appeared at Sr. No. 2 of the list as NV Patel (i.e. Abbreviation of Narendrabhai Vitthalbhai Patel) and thus, rejection of his application was patently wrong. The Commissioner of Schools passed an order on the same day i.e. 18.12.2006 rejecting the application/appeal of the petitioner on the ground that the Election Officer had stated that names of the petitioner and his proposer did not appear in the voters' list and hence, his decision did not call for any interference.

4. Being aggrieved by the said decision of the Commissioner of Schools, the petitioner preferred Special Civil Application No.26560 of 2006 before this Court on 21.12.2006. This Court dismissed the

said petition on the ground that the better remedy available to the petitioner was of election petition and not a writ petition under Article 226 of the Constitution of India since the election process had already been started and the respondent No.1 was declared uncontested. Thereafter, the petitioner filed Special Leave Petition before the Hon'ble Supreme Court on 17.01.2007 which was decided on 31.01.2007 reserving liberty with the petitioner to take steps for redressal of his grievances in any other forum.

5. The petitioner thereafter filed the present petition before this Court challenging the election of the respondent No. 1 as a Member of the Board as the election of the respondent No.1 as an uncontested candidate is wholly illegal and void. The rejection of the petitioner's application/candidature has also been equally illegal and invalid and, therefore, the election for the membership of the Board for the category of Teachers of Registered Secondary Schools other than Uttar Buniyadi Schools deserves to be quashed and set aside as regards the uncontested membership of the respondent No. 1 and all consequential directions were also prayed for by the petitioner in this petition.

6. This Court has issued Rule on 28.03.2007. On service of rule, Mr. V.M. Pancholi, learned advocate appeared for respondent No.1. Mr. AD Oza, learned advocate appeared for respondent No.2-Board. Mr. Neeraj Soni, learned Assistant Government Pleader appeared for respondent No. 3.

7. Mr. P.M. Dave, learned advocate appearing for the petitioner has submitted that the names of the petitioner as well as the person who proposed his candidature in the voters' list were published by the Board and, therefore, only because the names of the petitioner and the person who proposed his candidature were published in abbreviated form, and not fully, the Election Officer and the Commissioner could not have held that names of these persons did not appear in the voters' list. The actions of the Election Officer and the Commissioner are not only unreasonable and arbitrary, but these actions also appeared too far from bonafide, aimed at ensuring that the petitioner did not contest the election for being a Member of the Board and, therefore, such illegal and palpably wrong decisions deserve to be set aside in the interest of justice.

8. Mr. Dave has further submitted that the petitioner's name appeared at Sr. No. 1821 of the published list, and the only point that the Election Officer and the Commissioner refused to see is that the petitioner's name was shown as NC Patel in the list whereas the petitioner has written his full name as Narendrakumar Chandulal Patel in the application form because it is clarified in the form itself that the full name of the candidate should be written. Similarly, it is stated that in the form itself, the person proposing should also write full name and address and the proposer's name was written as Narendrabhai Vitthalbhai Patel and it was this proposer who was listed at Sr. No. 2 of the voters' list as NV Patel.

This factual position was clarified by the petitioner to the Election Officer and the Commissioner and there was no scope for any confusion on the part of the Election Officer and the Commissioner inasmuch as petitioner's form also revealed the numbers at which their names appeared in the voters' list. He has, therefore, submitted that the actions of the Election Officer and the Commissioner are ex-facie illegal and therefore, these actions and the orders passed by the Election Officer and the Commissioner deserve to be quashed and set aside. Mr. Dave has further submitted that the action of the Election Officer in declaring the respondent No.1 as an uncontested member of the Board is also illegal in as much as the petitioner's candidature has been rejected illegally and unreasonably and hence, consequent action of Election Officer in deciding the respondent No.1 as an uncontested member of the Board also deserves to be quashed and set aside.

9. Mr. V. M. Pancholi, learned advocate appearing for the respondent No. 1 has raised preliminary objection about the maintainability of petition. He has further submitted that the Court should not go into the merits of the matter as the earlier petition moved by the petitioner was disposed of even on merits. He has relied on the provisions contained in Regulation 9 of Secondary Education Regulations, 1974 ('the Regulations' for short). He has further submitted that Regulation 9 of the Regulations deals with scrutiny of nomination and clause (2) of the said Regulation states

that the Returning Officer shall examine the nomination papers and decide any objection raised before him against any nomination and may either on such objection on his own motion and after such summary inquiry, if any, as he considers necessary reject a nomination paper on any of the following grounds, namely :- (i) that the candidate is disqualified under the act; (ii) that the name of the candidate does not appear in the list of voters; or (iii) that the candidate has failed to comply with any of the provision required by these rules or regulations. He has further submitted that the Election Officer has rejected the nomination of the petitioner on the ground that the petitioner's name did not appear in the list of voters as it was not the same name which appeared in the voters' list. He has further drawn the attention of the Court to Clause (3) of Regulation 9 of the Regulations which says that for the purpose of sub-rule (1) an entry made in the list of voters shall be a conclusive evidence of the right of any voter named in that entry to stand for election. He has, therefore, submitted that in the list of voters, the name of the petitioner is shown as NC Patel which did not appear in the nomination form and hence, it is a conclusive evidence based on which the Election Officer has taken the decision and hence, there is no infirmity or illegality in the order passed by the Election Officer for rejection of the nomination form of the petitioner.

10. Mr. Arun D. Oza, learned advocate appearing for respondent

No.2 Board has also raised the preliminary contention against maintainability of the petition. He has submitted that earlier also, the petitioner had ventilated his grievances before this Court by way of Special Civil Application No.26560 of 2006, *inter alia*, praying for issuance of direction to the respondent No.2 Board to allow the petitioner to contest the election of the Board by including the name of the petitioner in the list of candidates for the election to be held on 19.01.2007 and further to quash and set aside the orders dated 16.12.2006 and 18.12.2006 passed by respondent Nos.2 & 3 respectively. He has further submitted that while disposing of the said petition, this Court in its order has observed that better remedy available to the petitioner is of Election Petition. The petitioner thereafter challenged the said order by way of filing Special Leave to Appeal (Civil) No. 1110 of 2007, which came to be dismissed reserving liberty for the petitioner to take steps for redressal of his grievances before any other forum. He has, therefore, submitted that even the Hon'ble Supreme Court has declined to interfere with the judgment of this Court meaning thereby, the judgment of this Court has been confirmed by the Hon'ble Supreme Court and hence, the best course available with the petitioner is to file Election Petition. He has further submitted that the petitioner is having alternative efficacious remedy of filing election petition before the appropriate forum as observed by this Court as well as by the Hon'ble Supreme Court and hence, the present petition is required to be rejected on

the ground of alternative remedy of filing Election Petition. Mr. Oza has further submitted that the petitioner has prayed for the very same reilefs in the present petition with some modifications and hence, the present petition is barred by res judicata. Having once approached this Court and having failed in the petition wherein the judgment of this Court has been confirmed by the Hon'ble Supreme Court, the present petition is not maintainable.

11. Mr. Oza has further submitted that the nomination form of the petitioner was rightly rejected vide order dated 16.12.2006 which was confirmed in appeal vide order dated 18.12.2006. It is obvious from the orders passed by the authorities that the name of the petitioner as well as the proposer was not reflected in the voters' list. On verification, it has come to the notice that the names of the petitioner as well as his proposer were not tallying with the names shown at the said serial number in the voting list and hence, the candidature / nomination form of the petitioner was rejected. He has, therefore, submitted that the decisions taken by the authorities are absolutely just, proper and correct and the same cannot and should not be interfered with by this Court. He has further submitted that the action of the authorities in rejecting the nomination form of the petitioner is bonafide and is absolutely a proper decision. The name of the petitioner which is reflected in the form is filled in by the petitioner himself and the same is not tallying with the name mentioned in the voters' list. The contention

of the petitioner that the petitioner was required to submit his full name in the application is devoid of any substance and merits because in the column of name of the candidate, the concerned person has to mention the name as reflected in the final voters' list. The petitioner has written his name in the said column as Patel Narendrakumar Chandulal. However, the said name was not reflected in the serial number being given at the voters' list. The petitioner could have very well written his name as per the voters' list but has not done so and now could not agitate in saying so that the full name was written as per the instructions provided in the nomination form / candidature. He has further submitted that full name was only required to be mentioned by the proposer in the beginning of the form, but after the signature of the proposer, later portion is to be filled in by the candidate himself, wherein the candidate has to mention his name as appeared in the voters' list. He has further submitted that the petitioner has not remained present on the date of scrutiny and himself remained indolent in respect of the same. The petitioner is, therefore, not justified in challenging the said decisions in the present petition.

12. Mr. Oza has also raised one more contention that the petition is barred by period of limitation. For this purpose, he relied on Regulation 33 of the Regulations which says that on expiry of one month from the date of the publication of the result of the election or where the validity of an election has been challenged in a

competent Court on the expiry of three months from the date of the decision of the competent Court, Returning Officer, shall with the previous sanction of the Board destroy the ballot papers including both those in the ballot boxes and those in the sealed packets, and other documents relating to the election. Based on this regulation, he has submitted that the Hon'ble Supreme Court has dismissed the SLP on 31.01.2007 and the petitioner ought to have filed the present petition within one month from the date of the said decision. The present petition is field in March 2007 and hence, the petition being barred by period of limitation deserves to be dismissed on this ground.

13. After having heard learned advocates appearing for the respective parties and after having gone through the orders passed by the Authorities as well as the order passed by this Court in earlier petition as well as the order passed by the Hon'ble Supreme Court, we are of the view that liberty was reserved for the petitioner to file an election petition. Even while dismissing the Special Leave Petition, the Hon'ble Supreme Court has also observed that liberty is reserved for the petitioner to take steps for redressal of his grievances in any other forum. Since no forum is prescribed under the Act as well as the Rules for filing election petition, the petitioner can file the same before this Court. It is no where stated that such election petition can only be filed before the Civil Court. So far as the observations made by this Court in earlier

petition are concerned, those observations cannot come in the way of the petitioner as earlier the petition was dismissed keeping in mind the fact that the election process was already started and the Court has not thought it fit to interfere at the stage when the election process was in progress. It is only because of this fact, the Court has granted liberty to file election petition. The petitioner was not restrained by the Court from raising the disputes which were raised in the earlier petition and hence, the petitioner is justified to agitate all these issues even on merits which were raised by him in the earlier petition.

14. While going through the impugned orders, we found that the petitioner's candidature / nomination form was rejected only on technical ground. The petitioner has filled in the form wherein he has mentioned his full name which is even otherwise required as per the particulars given in the nomination form. In the later part of the nomination form, it is no where mentioned that the petitioner should write his name as per the name mentioned in the voters' list. In the voters' list, the names of the voters are mentioned in short abbreviations. Even in the voters' list, the name of the School as well as the voters' serial numbers are mentioned. There is no dispute about the fact that the petitioner's name in the voters' list is put under the name of the correct school. His correct number is also mentioned in the voters' list. Similarly, the proposer's name as well as his school name were also correctly mentioned in the voters'

list. It is nobody's case that the name mentioned in the nomination form as well as the name mentioned in the voters' list are of two different persons. It is, therefore, not just and proper for the authorities to arrive at the conclusion that the petitioner's name as well as his proposer's name did not appear in the voters' list. Even otherwise, Regulation 9 (2) expects the Election Officer to undergo the summary inquiry and thereafter, if there is any discrepancy and it is not properly explained or removed, the nomination form may be rejected. It appears that the Election Officer has not carried out any such summary inquiry and straightway rejected the nomination form of the petitioner. In our view, there is no justification to reject the nomination form of the petitioner as the petitioner is the same person whose name is mentioned in the nomination form as well as in the voters' list. Mr. Pancholi's contention about conclusiveness of evidence attached to the entry made in the list of voters under Regulation 9 (3) of the Regulations would not render any assistance to the respondent No.1 as it merely refers to the inclusion of the name of the candidate. Once the name is included in the list of voters, it becomes conclusive evidence. Here in the present case, we are of the view that the petitioner's name and that of his proposer are already included in the voters' list. Simply because their names were not in short abbreviations as per the voters' list would not disentitle the petitioner from contesting the election.

15. As far as the contention raised by Mr. Oza with regard to the

petition being barred by limitation, we are of the view that Regulation 33 does not lay down any time limit for filing of the election petition. It merely refers to the power of the Election Officer to destroy the ballot papers and says that within one month from the date of election, the ballot papers are to be destroyed and if the election is challenged before the competent Court, in that case, three months period is prescribed. No where it is stated that election petition is also to be filed within one month from the date of declaration of the result. Since the petitioner has filed the petition within reasonable time i.e. within one and half months from the date on which the Hon'ble Supreme Court has dismissed the SLP, the petition cannot be thrown overboard on the ground of limitation.

16. Taking overall view of the mater and considering the entire facts and circumstances of the case, we are of the view that the orders dated 16.12.2006 and 18.12.2006 passed by the Election Officer and Commissioner respectively are not just, legal and proper. The election of respondent No.1 as a Member of the Gujarat Secondary Education Board in the category of Teachers of Registered Secondary Schools other than Uttar Buniyadi Schools is hereby quashed and set aside and the respondent No.2 Board is hereby directed to hold afresh election for the said post within a period of two months from today and permit the petitioner to contest the said election.

17. At this stage, Mr. Pancholi, learned advocate appearing for the respondent No.1 has prayed for stay against operation, implementation and execution of this order as the respondent No.1 wants to challenge the present decision before the Hon'ble Supreme Court. The prayer is opposed by the petitioner. Having regard to the facts and circumstances of the case, stay as prayed for is granted upto 19.11.2007.

18. Subject to the aforesaid directions and observations, this petition is accordingly allowed. Rule is made absolute without any order as to costs.

Sd/-
[M. S. SHAH, J.]

Sd/-
[K. A. PUJ, J.]

Savariya